



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTON  
ATTORNEY GENERAL**

**January 22, 1990**

Mr. James A. Lynaugh  
Director  
Texas Department of Corrections  
P. O. Box 99  
Huntsville, Texas 77342-0099

LO-90-6

Dear Mr. Lynaugh:

You ask whether an executive order continues in effect after the expiration of the term of the governor who issued the order. Specifically, you ask about an order issued on December 16, 1977, by Governor Dolph Briscoe. The order purported to establish procedures for implementation of a flood plain management program to bring the state into compliance with the National Flood Insurance Program to insure future federal disaster relief loans and to obtain flood insurance coverage for state-owned structures. Executive Order D.B. No. 34-A (December 16, 1977).

Congress enacted the National Flood Insurance Program in 1968. National Flood Insurance Act of 1968, Pub. L. No. 90-448, 82 Stat. 476, 572-89 (1968). The act authorized the Secretary of Housing and Urban Development to establish a nationwide flood insurance program and to do so in cooperation with the private insurance industry. Id. § 1304. Although the highest priority for the program was to make flood insurance available for residential property, the act also authorized the Secretary of Housing and Urban Development to take steps to make flood insurance available for other types of property, including properties owned by state and local governments. Id. § 1305.

The executive order you ask about cites two federal regulations issued by the Department of Housing and Urban Development that deal with flood insurance for state-owned property, 24 C.F.R. §§ 1910.11, 1910.12, (redesignated as 44 C.F.R. parts 61, 62), that in short, provide that a state must comply with certain flood plain management criteria in order to obtain flood insurance for state-owned property. Governor Briscoe apparently intended the executive order in question to bring the state into compliance with those

federal regulations. The validity of the order, however, would depend on whether the governor had authority to establish flood plain management regulations.

In 1969 the Texas legislature enacted a Flood Control and Insurance Act. Acts 1969, 61st Leg., ch. 782, at 2313. See generally Attorney General Opinions H-978, H-1011 (1977). Section 4 of the act provided:

In recognition of the necessity for a coordinated effort at all levels of government, the Texas Water Development Board shall cooperate with the Federal Insurance Administrator of the United States Department of Housing and Urban Development in the planning and carrying out of state participation in the National Flood Insurance Program; provided, however, that the responsibility for qualifying for the National Flood Insurance Program shall belong to any interested political subdivision, whether presently in existence or created in the future.

That act also provided that all political subdivisions were authorized to take all necessary and reasonable actions to comply with the National Flood Insurance Program. Id. § 5. Nothing in the act gave the governor authority to take any action in regard to flood insurance or flood plain management.<sup>1</sup> See generally Attorney General Opinion M-910 (1971) (governor has no authority to enter into contract on behalf of state as a whole). We find no other legislation in effect at the time of the governor's order that would have given the governor authority to take such action. Consequently, it appears that the order you ask about did not have the force of law when it was issued. See Calvert v. Adams, 388 S.W.2d 742, 747 (Tex. Civ. App. - Austin), rev'd on other grounds, 396 S.W.2d 948 (Tex. 1965) (holding that to the extent deed of cession executed by governor can be construed to grant rights in excess of those granted by

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1. Nothing in the federal act suggests that Congress intended to confer on state governors authority to take action in regard to the flood insurance program. See generally Attorney General Opinion JM-772 (1987) (considering whether Congress can expand the authority of state governors).

law, the deed must be disregarded). Therefore, it is unnecessary for us to consider your question as to the expiration date of that order.

Yours very truly,

A handwritten signature in cursive script, reading "Sarah Woelk".

Sarah Woelk  
Assistant Attorney General  
Opinion Committee

SW/lcd

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